

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1161 of 2000

to

FIRST APPEAL No 1166 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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SPL. LAND ACQUISITION OFFICER

Versus

PUJABHAI MARGHABHAI

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Appearance:

MS NANDINI JOSHI, AGP for Petitioners

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CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

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Date of decision: 19/09/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

Admitted. Mr. A.J. Patel waives service of notice on behalf of the claimants in each appeal. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, all the appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated August 17, 1999 rendered by the learned 3rd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Case No.288/94 to Land Acquisition Case No.293/94. It may be stated that the Land Acquisition Officer had made common award dated December 12, 1988 determining amount of compensation payable to the claimants. Moreover, Land Acquisition Case No.289/94 was treated as the main case by the Reference Court in which the parties had led common evidence. As common questions of fact and law arise for our determination in these appeals, we propose to dispose them of by this common judgment.

3. The State Government had received a proposal to acquire agricultural lands of Village Medra, Taluka and District Gandhinagar for the public purpose of Narmada Project Main Canal. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Medra were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on December 3, 1985. Those persons whose lands were sought to be acquired were served with notices under Section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Medra, which were specified in the Notification published under Section 4(1) of the Act, were needed for the public purpose of Narmada Project Main Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the

Official Gazette on December 3, 1986. The interested persons were thereafter served with notice under Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.m. but having regard to the materials placed before him, the Land Acquisition Officer offered compensation to the claimants at the rate of Rs.2.50 per sq.m. by his award dated December 12, 1988. The claimants were of the view that offer of compensation made by the Special Land Acquisition Officer was inadequate and therefore, they accepted the amount of compensation under protest. They filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur which were registered as Land Acquisition Case No.288/94 to Land Acquisition Case No.293/94.

4. In the Reference Applications, it was pleaded that village Medra had got all the facilities such as light, water, schools, primary schools, hospital, bus stand, telephone exchange etc. and therefore, the claimants ought to have been awarded compensation at the rate of Rs.50/- per sq.m.. According to the claimants, the lands acquired were irrigated lands and as claimants were earning substantial amount by way of sale of agricultural produces, they were entitled to enhanced compensation. It may be stated that initially, the claimants had claimed compensation before the Court at the rate of Rs.50/- per sq.m. but thereafter, they had amended the applications and claimed compensation at the rate of Rs.100/- per sq.m.

5. The Special Land Acquisition Officer, Narmada Project, Unit No.3 had contested the reference applications by filing written statement at Exh.11. In the reply, it was stated that the Land Acquisition Officer had determined compensation after taking into consideration the situation of the lands acquired, fertility, crop pattern etc. and as just compensation was determined by the Land Acquisition Officer, the reference applications should be dismissed. The Executive Engineer, Narmada Project, Main Canal Construction Division 11, Ahmedabad had filed written statement at Exh.16 and controverted the averments made by the claimants in the reference applications. In the said reply, it was inter alia contended that having regard to the prevailing market rates and the type of the lands acquired, the Land Acquisition Officer was

justified in offering compensation to the claimants at the rate of Rs.2.50 per sq.m. and therefore, the reference applications should be dismissed. The learned advocate for the claimants had submitted a pursis at Exh.18 and requested the Court to consolidate all the reference cases with Land Acquisition Case No.289/96 and as the learned District Government Pleader had made an endorsement indicating that he had no objection to such consolidation, the court had passed an order below Exh.18 and consolidated all the land acquisition cases with Land Acquisition Case No.289/96, which was treated as the main case. Upon rival assertions of the parties, necessary issues for determination were framed by the Reference Court at Exh.17.

6. On behalf of the claimants, witness Naranbhai Dahyabhai Patel who was claimant in Land Acquisition case No.288/94 was examined at Exh.44. He deposed before the court that village Medra is at a distance of 1.1/2 km from National Highway No.8 and at a distance of 1 to 1.1/2 km from Ahmedabad City. The witness informed the court that village Medra is included within the limits of Ahmedabad Urban Development Authority. The witness further stated before the court that village Medra has facility of Railway Station and has got other amenities such as road, water, light, hospital, High School, Post office, telephone etc. The witness claimed that in village Medra, there are two rice mills and Naroda Industrial Area is about 1 to 1.1/2 km away from the village whereas Ahmedabad Airport is at a distance of 5 km from the village. According to the witness, the claimants were taking 2 to 3 crops in a year and the lands acquired were irrigated lands. During the course of his examination-in-chief, the witness produced previous award of Reference court in Land Acquisition Case No.107/87 relating to agricultural lands of Village Ranasan, Taluka and District Gandhinagar at Exh.29 and claimed that as the lands of village Ranasan were similar to the lands acquired in the instant case, the claimants were entitled to compensation on the basis of the said previous award. The witness also produced a copy of judgment rendered by Division bench of High Court on October 18, 1995 in First Appeal No.1976/95 at Exh.30 to show that the previous award of the Reference Court rendered in Land Acquisition Case No.107/87 was affirmed by the High Court and had become final between the parties.

7. According to this witness, agricultural lands of village Limbadiya were also similar to the lands of village Medra and produced previous award of Reference

Court relating to agricultural lands of village Limbadiya in Land Acquisition Case Nos.504/91 to 507/91 and Land Acquisition Case Nos.219/94 to 225/94 as well as Land Acquisition Case No.244/94 at Exh.32 and claimed that the claimants were also entitled to compensation on the basis of the said previous award of the Reference Court. According to the witness, agricultural lands of village Limbadiya were assessed at Rs.70/- per sq.m. as on December 11, 1985 which was the date of publication of Notification under Section 4(1) of the Act but compensation payable to the claimants was reduced by the High Court to Rs.57/- per sq.m. vide judgment dated July 22, 1997 which was rendered in First Appeal Nos.4649/96 to 4658/96 and other related Appeals. The witness produced the judgment of the High Court at Exh.35. The witness further produced order of the Supreme Court dated February 13, 1998 at Exh.37 to show that the Supreme Court in the said case had reduced the amount of compensation payable to the claimants at the rate of Rs.53/- per sq.m. However, the witness maintained that as the agricultural lands of village Limbadiya were similar in all respects to the agricultural lands of village Medra, the claimants were entitled to compensation on the basis of previous award relating to agricultural lands of village Limbadiya as modified by the Supreme Court. The witness also produced previous award of Reference Court relating to agricultural lands of adjoining village Valad but it is not necessary to refer to the same in detail at this stage. The witness also claimed before the court that each claimant was earning Rs.35,000/- to 40,000/- per bigha as net profit by way of sale of agricultural produces.

8. During cross-examination, the witness admitted that he had no documentary evidence to show that the claimants were earning Rs.35,000/- to Rs.40,000/- by way of sale of agricultural produces. The witness also admitted that villages Limbadiya and Valad were abutting on Highway and that village Medra was not well-developed.

9. On behalf of the claimants, another witness i.e. Khushabhai Bababhai Patel was examined at Exh.50. This witness is resident of village Limbadiya. The witness claimed before the court that fertility of lands of villages Medra, Ranasan, Limbadiya and Valad were same. This witness also referred to previous award relating to agricultural lands of village Limbadiya, as modified by the Supreme Court and stated that as the lands acquired in the instant case were situated near the lands acquired from village Limbadiya, the claimants were entitled to compensation on the basis of previous award relating to

agricultural lands of village Limbadiya. During cross-examination, the witness denied the suggestion made on behalf of the appellants that fertility of agricultural lands of village Medra was not similar to that of agricultural lands of village Limbadiya.

10. On behalf of the acquiring authorities, witness Vinodbhai Kantilal Shah was examined at Exh.54. This witness stated before the court that village Limbadiya is at a distance of 3.1/2 km from the lands acquired in the present case and lands of village Limbadiya were not similar to the agricultural lands of village Medra. The witness referred to surrounding developments which had taken place near village Limbadiya and claimed that no industrial development had at all taken place in village Medra. In his cross-examination, the witness denied suggestion made on behalf of the claimants to the effect that fertility of agricultural lands of village Medra, Karai, Limbadiya and Ranasan was similar. The Special Land Acquisition Officer i.e. Chimanbhai Ramanbhai was examined at Exh.55. He asserted before the court that he had determined the amount of compensation after taking into consideration relevant factors such as situation of the lands, fertility, sale instances etc. and no evidence was led by the claimants before him in support of their claim for higher compensation. In his cross-examination, the witness stated that he had not seen the lands of village Limbadiya, Karai or Ranasan nor had he read the book relating to assessment of agricultural lands. The witness claimed ignorance about decision of the Supreme Court whereby the claimants whose agricultural lands from village Limbadiya were acquired were paid compensation at the rate of Rs.53/- per sq.m. Another witness namely Jagdishbhai Damodar Gajjar who was the Government registered Valuer was examined at Exh.56. This witness produced his Valuation Report at Exh.57 relating to the acquired lands and claimed before the court that the price of the lands acquired cannot be more than Rs.10/- per sq.m. In his cross-examination, the witness denied the suggestion that the price of the lands acquired was Rs.60/- per sq.m. The last witness examined on behalf of the acquiring authorities was Motilal Gurubax Notnani. His evidence was recorded at Exh.60. The witness stated before the court that the lands of village Valad, Ranasan, Karai and Limbadiya were not similar to the lands of village Medra and that village Limbadiya and village Ranasan are abutting on National Highway. The witness claimed before the court that in village Medra, no industrial development had taken place and agricultural lands of village Medra had no potential value at all. However, in his cross-examination, the

witness in terms admitted that the fertility and yield of agricultural lands of village Limbadiya, Valad, Karai and Ranasan were similar to the agricultural lands of village Medra. After recording of evidence of witness Motilal Gurubax Notnani was over, the learned District Government Pleader, Mirzapur submitted a pursis at Exh.62 and declared before the court that no further evidence either oral or documentary was to be led on behalf of the original opponent no.1. Shri B.G. Patel, learned counsel representing present appellant no.2 before the Reference Court, submitted an application at Exh.63 and sought permission of the court to produce documents vide a separate list. The record does not indicate that the Reference Court either allowed or rejected the said application and the only order which was passed by the Reference Court was "recorded". The record also does not indicate that any endorsement on Exh.63 was obtained from the learned counsel of the claimants. Thereafter, the learned counsel for the appellant no.2 submitted a list at Exh.64 and produced two previous awards i.e. (1) relating to agricultural lands of village Dabhoda and (2) another previous award relating to agricultural lands of village Medra at Exhs.65 and 66 respectively. Exh.64 does not indicate that any order was passed by the Reference Court exhibiting the two documents which were produced with list Exh.64.

11. On appreciation of evidence led by the parties, the Reference Court deduced that previous awards produced by the claimants relating to agricultural lands of village Ranasan and Limbadiya were relevant as well as comparable for the purpose of ascertaining market value of the lands acquired in the instant case. Placing reliance on those previous awards, the Reference Court by the impugned common award has held that the claimants are entitled to compensation at the rate of Rs.41.50 per sq.m. giving rise to the present appeals.

12. Ms. Nandini Joshi, learned Assistant Government Pleader submitted that villages Ranasan and Limbadiya were abutting on the National Highway and were fully developed in comparison to village Medra and therefore, the previous awards relating to lands of those villages could not have been made basis for determining market value of the lands acquired in the instant case. According to the learned counsel, while determining compensation payable to the claimants of village Ranasan and Limbadiya, the court had taken into consideration potential value and as village Medra is situated in the interior and lands acquired had no potential value, previous awards relating to agricultural lands of village

Ranasan and Limbadiya should not have been relied upon by the Reference Court while determining market value of the agricultural lands of village Medra. What was emphasised by the learned counsel for the appellants was that Exh.66 which is previous award of Reference Court relating to agricultural lands of village Medra furnishes good guide for determining market value of the lands acquired in the instant case and therefore, the appeals should be accepted.

13. Mr. A.J. Patel, learned counsel for the appellants submitted that previous awards relating to agricultural lands of village Ranasan and Limbadiya do not indicate that potential value of the lands was taken into consideration while assessing their market value and therefore, the Reference Court was justified in placing reliance on the previous awards relating to those villages, more particularly, when fertility of the lands acquired were similar to the fertility of lands of village Ranasan and Limbadiya. The learned counsel maintained that after the evidence of parties was over, previous award relating to agricultural lands of village Medra was produced on behalf of the acquiring authorities at Exh.66 regarding which no opportunity to explain was given to the claimants and therefore, Exh.66 should be ignored while determining compensation of the lands acquired. In the alternative, learned counsel submitted that even on the basis of Exh.66 award of the Reference Court is justified and the appeals being without substance should be dismissed.

14. We have heard learned counsel for the parties and taken into consideration the documentary as well as oral evidence on record. In this case, the claimants have not based their claim for enhanced compensation either on sale instances or on yield method, but they have relied upon previous awards of the court relating to similar lands. The evidence on record indicates that the lands acquired were even and irrigated. Village Medra is at a distance of 1.1/2 Km from National Highway No.8 and 1.1/2 km away from the limits of Ahmedabad Municipal Corporation. The village has got the facility of Railway station and is within the limits of Ahmedabad Urban Development Authority. The evidence of witness Naranbhai Dahyabhai Patel would indicate that Naroda Industrial Estate is at a distance of 1.1/2 km from the acquired lands. Witness Motilal Gurubax Notnani examined on behalf of the acquiring authorities has in terms admitted that the fertility and yield of agricultural lands of village Limbadiya, Valad, Karai and Ranasan are the same as that of acquired lands. Therefore, the previous

awards relied upon by the claimants relating to agricultural lands of village Limbadiya and Ranasan will have to be considered to find out whether they are relevant for the purpose of ascertaining market value of the lands acquired in the instant case. It is well-settled that the award rendered by the Reference Court in respect of similar lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by courts in previous cases of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in previous land acquisition proceedings can be treated as affording a good guide for determination of compensation to be awarded for lands acquired subsequently from adjacent village. In assessing the market value of a piece of land, price paid in other transactions relating to land in the neighbourhood must be of some value. What its value is, has to be determined by the court after considering all the evidence on which the previous award is founded. The awards given by the Reference Court are at least relevant material and may be in the nature of admission with regard to value of the lands on behalf of the State and if lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates found in the said previous awards can be treated as relevant material to offer a basis to work upon for determination of the compensation on a later date. Having regard to these principles, we proceed to consider the relevancy of previous awards relating to agricultural lands of village Limbadiya and Ranasan.

15. Exh.29 is the award of Reference Court rendered on September 3, 1994 in Land Acquisition Case No.107/87. It indicates that Block No.28 of village Ranasan, Taluka and District Gandhinagar was acquired pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on March 10, 1983 for the purpose of 220 KV Ranasan Sub-station. The claimants had claimed compensation at the rate of Rs.50/- per sq.m. but the Land Acquisition Officer by his award dated March 14, 1986 had offered compensation at the rate of Rs.2.50 per sq.m. Feeling aggrieved by the said offer of compensation, the claimants had sought Reference and the Reference Court after taking into consideration the evidence adduced before it including previous awards held that the claimants were entitled to compensation at the rate of Rs.37/- per sq.m. Exh.30 which is judgment of

the High Court in First Appeal 1976 of 1995 indicates that the award of the Reference Court which was rendered in Land Acquisition Case No.107/87 was upheld. Again Exh.32 which is award of the Reference Court rendered in Land Acquisition Case No.504/91 to 507/91 and other matters indicates that agricultural lands of village Limbadiya were acquired pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on December 11, 1986 for the public purpose of construction of Main Canal of Narmada Project. Therein, the claimants had claimed compensation at the rate of Rs.100/- per sq.m. but the Land Acquisition Officer by his award dated February 2, 1989 had offered compensation to the claimants at the rate of Rs.3.50 per sq.m. Feeling aggrieved by the said offer, the claimants had sought References and the Reference Court by judgment and award dated November 14, 1995 held that the claimants were entitled to compensation at the rate of Rs.70/- per sq.m. Exh.34 which is judgment of the High Court in First Appeal Nos.4649/96 to 4658/96 and other cognate matters. It indicates that the High Court vide judgment dated July 22, 1997 had reduced the compensation payable to the claimants and held that the claimants were entitled to compensation at the rate of Rs.57/- per sq.m. Exh.37 which is the order dated February 13, 1998 passed by the Supreme Court indicates that the Supreme Court had awarded compensation to the claimants at the rate of Rs.53/- per sq.m. Thus, those whose agricultural lands from village Limbadiya were acquired were paid compensation at the rate of Rs.53/- per sq.m. The evidence on record indicates that the lands which were subject matter of the previous awards are in the vicinity and in reasonable proximity to the lands acquired in the instant case. As observed earlier, the fertility and yield is also similar. Under the circumstances, we are of the opinion that the Reference Court did not commit any error in placing reliance on the previous awards for the purpose of determining market value of the lands acquired in the present case.

16. The contention that while determining the market value of the lands which were acquired from village Ranasan and Limbadiya, the Reference Courts had taken into consideration potential value and therefore, should not be relied upon, has no substance. It is true that the Reference Court has referred to industrial development which had taken place near villages Ranasan and Limbadiya but the scrutiny of the judgments would show that previous awards were relied upon and the value of lands was assessed on the basis that they were agricultural lands. The contention that Exh.66 which is

a previous award relating to the lands of this very village ought to have been made basis for determining compensation of the lands acquired in the instant case, has also no substance. As observed earlier, the claimants were not given any opportunity to explain the said award. Moreover, this previous award was never referred to by any of the witnesses examined on behalf of the appellants. In fact, there was no express order allowing the production of the said award and therefore, it could not have been exhibited and received in evidence. Even otherwise, Exh.66 indicates that only part of certain Survey Numbers of village Medra were acquired for Virathalavadi-Medra Road pursuant to Notification under Section 4(1) of the Act which was published in the Official Gazette on September 20, 1990. The extent acquired from concerned Survey Nos. was small. Moreover, the Reference Court had relied upon the same award relating to agricultural lands of village Ranasan which is relied upon by the Reference Court in the present case observing that there was no reason to assess market value of the lands of village Medra and village Ranasan on different footing. Further, it was wrongly noticed by the Reference Court in Exh.66 that lands of village Ranasan were assessed as on 1985 because the previous award of Reference Court relating to agricultural lands of village Ranasan would indicate that lands were acquired pursuant to publication of Notification under Section 4(1) of the Act on March 10, 1983 and compensation payable was determined as on March 10, 1983. In Exh.66, the Reference Court correctly noticed the principle laid down by the High Court that when there is time lag between the Notifications published under Section 4(1) of the Act, the claimants should be given reasonable rise in price of lands at the rate of 10% per annum but committed error in applying said principle to the facts before it and in the ultimate analysis held that the claimants were entitled to compensation at the rate of Rs.40/- per sq.m. If the principle laid down by the High Court that if there is time lag between publication of Notifications under Section 4(1) of the Act, the claimants should be given rise in price of lands at the rate of 10% per annum had been correctly applied, the rate would have been about Rs.60/- per sq.m. Therefore, even if some reduction is made because in the present case notification under Section 4(1) of the Act was published in December 3, 1985, the claimants would be entitled to compensation at the rate of Rs.41.50/- per sq.m. Thus, even on the basis of previous award of Reference Court relating to agricultural lands of this very village the claimants would be entitled to compensation awarded by the

Reference Court in the present case. On overall view of the matter, we are satisfied that a just award has been passed by the Reference Court determining compensation payable to the claimants and no ground is made out by the learned counsel for the appellants to interfere with the same. The appeals therefore, cannot be accepted and are liable to be dismissed. For the foregoing reasons, all the appeals fail and are dismissed with no orders as to cost.

( J.M. Panchal, J. )

( M.C. Patel, J. )

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